STATE OF MICHIGAN

COURT OF APPEALS

WILLIAM D. HENNESSEY and PEGGY A. HENNESSEY,

Plaintiffs-Appellees,

v

FRANCESCO LENA and CYNTHIA M. GILLESPIE-LENA,

Defendants/Third Party Plaintiffs-Appellants,

and

JAMES M. COCCIA and REBECCA J. COCCIA,

Third Party Defendants-Appellees.

UNPUBLISHED
February 24, 2015

No. 319779
Jackson Circuit Court
LC No. 12-002495-CH

Before: RIORDAN, P.J., and MURPHY and BOONSTRA, JJ.

PER CURIAM.

Defendants Francesco Lena and Cynthia M. Gillespie-Lena, appeal as of right the trial court order granting summary disposition in favor of plaintiffs William D. Hennessey and Peggy A. Hennessey, and third-party defendants James M. Coccia and Rebecca J. Coccia. This quiet title and trespass action involves a dispute between adjacent landowners regarding whether their property is divided by a single 33-foot easement or two 16.5-feet easements. We affirm.

I. EASEMENT

A. STANDARD OF REVIEW

"Actions to quite title [sic] are equitable in nature and are reviewed de novo by this Court. Review de novo is also appropriate because this issue was decided by the trial court as a result of plaintiffs' motion for summary disposition." *Dobie v Morrison*, 227 Mich App 536, 538; 575 NW2d 817 (1998) (citation omitted). "A trial court's dispositional ruling on equitable matters . . . is subject to review de novo." *Blackhawk Dev Corp v Village of Dexter*, 473 Mich 33, 40; 700 NW2d 364 (2005). Nevertheless, "[t]he scope and extent of an easement is generally a question of fact that is reviewed for clear error on appeal. Similarly, whether the scope of an easement has been exceeded is generally a question of fact. However, when reasonable minds

could not disagree concerning these issues, they should be decided by the court on summary disposition as a matter of law." *Wiggins v City of Burton*, 291 Mich App 532, 550; 805 NW2d 517 (2011).

B. ANALYSIS

Michigan law provides that a party's use of an easement must be strictly confined to the purpose for which it was granted or reserved. *Tomecek v Bavas*, 482 Mich 484, 490; 759 NW2d 178 (2008). In the instant case, all parties agree that the easement was created in the plat for the subdivision of Royal Shores. See *Jeffery v Lathrup*, 363 Mich 15, 21-22; 108 NW2d 827 (1961) ("Under Michigan law, an easement recorded on a subdivision plat by reference to which subdivision sales are made is binding on the parties."). "The designation of an easement on a properly recorded plat has all the force and effect of an express grant." *Wiggins*, 291 Mich App at 552 (quotation marks, citation, and brackets omitted). See also *Minnis v Jyleen*, 333 Mich 447, 454; 53 NW2d 328 (1952) ("The rights granted under the dedicatory clauses in the plat to the owners of lots in the subdivision may not be infringed by one lot owner for his own convenience to the detriment of his fellow lot owners.").

The interpretation of a plat is subject to well-established rules of construction. *Wiggins*, 291 Mich App at 552. There are no magic words required on a plat to create an easement. *Tomecek*, 482 Mich at 490-491. When interpreting a plat, we seek to effectuate the intent of those who created it. *Id.* "The intent of the plattors should be determined with reference to the language used in connection with the facts and circumstances existing at the time of the grant." *Dobie*, 227 Mich App at 540; *Curran v Maple Island Resort Ass'n*, 308 Mich 672, 679; 14 NW2d 655 (1944) ("The intention of the parties, as gathered from the whole instrument, will control[.]"). "The task of determining the parties' intent and interpreting the limiting language is strictly confined to the four corners of the instrument granting the easement." *Blackhawk Dev Corp*, 473 Mich at 42 (quotation marks and citation omitted). A party's use of the easement "must be within the scope of the plat's dedication[.]" *Dobie*, 227 Mich App at 541-542.

Only when the language in the granting instrument is ambiguous may we examine evidence extrinsic to the document to determine its meaning. *Blackhawk Dev Corp*, 473 Mich at 42. Even if an ambiguity exists, courts will "try to arrive at the intention of the parties and in accordance therewith[.]" *Id.* at 48-49 (quotation marks and citation omitted). As the Michigan Supreme Court has cautioned, only the existence of an ambiguity triggers the need to examine extrinsic evidence, and the consultation of extrinsic evidence when no ambiguity exists is inconsistent with the well-established principles of legal interpretation. *Id.* at 473 Mich at 49.

The issue in the instant case is whether the easement dividing lots 73/74 and 75/76 is a single 33-foot easement, or two 16.5-feet easements. The dedication to the plat states the following: "Owners of all lots with frontage on Lake Columbia are granted ingress and egress to Lake Columbia within the limits of their lot lines extended. Easements as shown on said plat are hereby reserved for the installation and maintenance of public utilities, drainage structures and private drives and no permanent structures are to be located within said easements." The marking on the plat map refers to a "16.5' Drive Easement" and there appear to be two lines originating from the notation.

Of initial significance is that the reference is singular, "16.5 Drive Easement." If the plattors intended to create two, separate easements, the reference would be in the plural, "16.5 Drive Easements." Moreover, the plattors sectioned off the easement by depicting the enclosure of a single area, which buttresses the conclusion that it is a single easement. Further, the 16.5-feet notation on the plat map appears to be a reference to the portion of the easement on each side of the adjacent property. In other words, the plattors were clarifying that the easement extends 16.5 feet onto each person's property.

Further, as plaintiffs highlight, the easement servicing lot 45 illuminates this issue. The same notation regarding the "16.5-feet Drive Easement" is present.[1] If the plattors intended this to be two, separate 16.5-feet drive easements, there would be no need for the easement on both sides of the property line to extend to lot 45. In other words, the plattors would have extended the drive and drainage easement passing through lots 43 and 44 to lot 45; there would be no need for the portion of the easement passing through lots 48, 47, and 46 to extend all the way to lot 45. Instead, the entire 33-foot easement extends to lot 45, which evinces the plattors' intent to create a single, 33-foot easement for the properties that would otherwise be landlocked.

The parties agree that the trial court erred in reviewing defendant's 2009 deed rather than the plat. However, plaintiffs contend that reversal is not required because the trial court reached the correct result, albeit for the wrong reasons. See *Taylor v Laban*, 241 Mich App 449, 458; 616 NW2d 229 (2000) ("we will not reverse the court's order when the right result was reached for the wrong reason."). Defendants, however, claim that several factual findings are required to reach this result, which are inapposite in a summary disposition ruling. Generally, the scope and extent of an easement are questions of fact. *Wiggins*, 291 Mich App at 550. However, "when reasonable minds could not disagree concerning these issues, they should be decided by the court on summary disposition as a matter of law." *Id.* at 550; MCR 2.116(G)(5). Here, a review of the plat reveals that the easement was intended to be a 33-foot easement servicing the lots it touches. A careful review of the plat reveals no issue upon which reasonable minds could differ. Therefore, summary disposition is proper. *Wiggins*, 291 Mich App at 550.

Despite this relatively straightforward dispute, defendants offer a multitude of complex arguments on appeal—many of which they did not raise below. For example, they discuss at length the nature of dominant and servient estates, the fact that the driveway at issue is in need of repair, the concept of strangers to a title, the doctrine of merger, and the nature of a reserve appurtenant easement. However, the sole issue before the trial court was whether, based on the plat, the plattors intended the easement to be two 16.5-feet easements or a single 33-foot easement. This issue can be resolved through an examination of the plat with rights of usage by the two lots adjacent to the easement. *Wiggins*, 291 Mich App at 552. Moreover, to the extent that defendants, now on appeal, claim that the easement has been infringed upon in other ways, such as the presence of trees, that argument does not defeat the result. No violation was shown that "nearly approached the extent of violation involved here. Where the restriction has been

[1] As well as the drainage easement.

violated in some degree, it does not thereby become void and unenforceable when a violation of a more serious and damaging degree occurs." *Jeffery*, 363 Mich at 22.

Defendants also contend that there is a "serious question whether there was any jurisdictional basis for the court to award Plaintiffs an equity judgment by summary disposition" because plaintiffs did not attach their own deed to the complaint. Defendants have not established that the failure to provide a deed in this case is a jurisdictional issue warranting dismissal. See *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959) (It is not enough "for a party simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position."). While defendants rely on MCR 3.411(C) and MCR 2.113(F),[2] plaintiffs attached to their complaint a map of the subdivision, a picture of the driveway, and a mortgage report describing, depicting, and denoting their ownership of the lot. Defendants also attempt to analyze various deeds for the plot plaintiffs now own. The majority of these deeds were not in the lower court record.[3] "This Court's review is limited to the record established by the trial court, and a party may not expand the record on appeal." *Sherman v Sea Ray Boats, Inc*, 251 Mich App 41, 56; 649 NW2d 783 (2002).

None of defendants' arguments can overcome the clear intent of the plattors, which is derived from an examination of the plat alone. *Blackhawk Dev Corp*, 473 Mich at 42, 49.

II. CONCLUSION

Because the plat demonstrates that the easement at issue is a single, 33-foot easement, we agree that summary disposition is proper. We have reviewed all remaining claims and find them to be without merit. We affirm.

/s/ Michael J. Riordan
/s/ William B. Murphy
/s/ Mark T. Boonstra

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[2] MCR 2.113(F) states that if a claim is based on a written instrument, it must be attached to the pleading except if it is a matter of public record in the county where the lawsuit was filed. MCR 3.411(C) provides that for actions to determine rights to land under MCL 600.2932, plaintiff must attach to the complaint a statement of title on which the pleader relies, which reveals from whom the title was obtained. Plaintiffs did not rely on MCL 600.2932 in their complaint.

[3] While defendants claim that they mentioned these deeds below, they did not provide the deeds for the trial court to examine.